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6 Attorneys for Plaintiffs

7  
8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAY AREA PAINTERS AND TAPERS  
PENSION TRUST FUND, et al.

11 Plaintiffs,

12 v.

13 N.J. KANN PAINTING, INC., a California  
14 corporation,

15 Defendant.

Case No.: C12-5542 CW

**REQUEST FOR ENTRY OF  
CONDITIONAL DISMISSAL WITHOUT  
PREJUDICE;**

**DECLARATION OF MICHELE R.  
STAFFORD IN SUPPORT THEREOF;**

**ORDER THEREON**

16  
17 For good cause shown below, Plaintiffs herein respectfully request that the Court vacate  
18 the calendar in this Action, and conditionally dismiss this matter for thirty (30) days without  
19 prejudice, pending bank clearance of Defendant's settlement payment.

20 1. As the Court's records will reflect, this action was filed on October 29, 2012 to  
21 compel Defendant's compliance with its obligations under the Collective Bargaining Agreement  
22 to which it is signatory. Plaintiffs filed suit for payment of contributions due them for the periods  
23 of December 2010 through February 2011 and February through August 2012, and for liquidated  
24 damages and interest accrued on late-paid contributions since August 2010.

25 2. Service on Defendant was completed on October 30, 2012. A Proof of Service of  
26 Summons was filed with the Court on November 6, 2012. [*Docket No. 12.*]

27 3. Plaintiffs were contacted by Defendant's counsel, requesting an informal  
28 resolution. Plaintiffs' counsel and Defendant's counsel engaged in settlement discussions and

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1 payment of the agreed-upon settlement amount has been received by Plaintiffs. The terms of the  
2 settlement authorizes Plaintiffs to deposit Defendant's payment upon filing a dismissal of this  
3 action.

4 4. Plaintiffs respectfully request that the Court therefore conditionally dismiss this  
5 matter without prejudice for thirty (30) days.

6 5. Plaintiffs shall have thirty (30) days from the date of entry of the conditional  
7 dismissal to reopen the action in the event that Defendant's check fails to clear the bank.

8 6. If Plaintiffs do not request that the Court reopen this matter within thirty (30) days  
9 of the date of entry of the conditional dismissal, the Court shall completely dismiss this action.

10 7. Plaintiffs have not previously filed or dismissed any similar action against  
11 Defendant and Defendant has not answered or otherwise appeared in this action.

12 I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above  
13 entitled action, and that the foregoing is true of my own knowledge.

14 Executed this 20th day of September, 2013, at San Francisco, California.

15 SALTZMAN & JOHNSON  
16 LAW CORPORATION

17 By: \_\_\_\_\_/S/  
18 Michele R. Stafford  
Attorneys for Plaintiffs

19 IT IS SO ORDERED.

20 This case shall be conditionally dismissed without prejudice, and the Court shall retain  
21 jurisdiction of the matter for thirty (30) days. In the event that Plaintiff does not reopen the case  
22 within thirty (30) days of the date of entry of the conditional dismissal, the Court shall dismiss this  
23 matter in its entirety.

24  
25 Date: 9/24/2013

26   
27 THE HONORABLE CLAUDIA WILKEN  
28 UNITED STATES DISTRICT COURT

PROOF OF SERVICE:

I, the undersigned, declare:

I am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to this action. My business address is 44 Montgomery Street, Suite 2110, San Francisco, California 94104.

On **September 20, 2013**, I served the following document(s) on the parties to this action in the manner described below:

**REQUEST FOR ENTRY OF CONDITIONAL DISMISSAL WITHOUT PREJUDICE;  
DECLARATION OF MICHELE R. STAFFORD IN SUPPORT THEREOF;  
[PROPOSED] ORDER THEREON**

XX **MAIL**, being familiar with the practice of this office for the collection and the processing of correspondence for mailing with the United States Postal Service, and deposited in the United States Mail copies of the same to the business addresses as specified below, in a sealed envelope fully prepared.

*To:*

*Attorney for Defendant:*

**William C. Dresser, Esq.  
Law Office of William C. Dresser  
4 N 2nd Street, Suite 1230  
San Jose, California 95113**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 20<sup>th</sup> day of September, 2013, at San Francisco, California.

/S/

Alicia Rutkowski